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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 589

VINCENT JOSEPH, *Petitioner*

vs.

THE STATE OF CONNECTICUT, *Respondent*

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF CONNECTICUT

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CITATIONS AND AUTHORITIES

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OPINION BELOW

The opinion of the Supreme Court of Errors of the State of Connecticut appears in the Appendix to the petitioner's brief starting on Page 7a. It is reported in 151 Conn. 592, 200 A. 2d 724.

JURISDICTION

The judgment of the Supreme Court of Errors of Connecticut was entered on May 19, 1964. Jurisdiction is invoked pursuant to 28 U.S.C., 1257 (3).

STATUTORY AND OTHER PROVISIONS

Connecticut General Statutes, Revision of 1958:

Section 51-16	Petitioner's Appendix p. 1a
Section 52-264	Appendix p. A-1

Connecticut Practice Book of 1934

Section 362	Appendix p. A-3
Section 370	Appendix p. A-4

Connecticut Practice Book of 1963

Section 612	Appendix p. A-1
Section 641	Appendix p. A-2
Section 713 (d)	Appendix p. A-3
Section 718	Petitioner's Appendix p. 2a

QUESTION PRESENTED

Did the decision of the Connecticut Supreme Court of Errors that a verdict of guilty against the petitioner was not inconsistent as a matter of law, and its refusal to consider a claim that the verdict was not supported by the evidence, rest upon an independent and adequate state ground where the assignment of error relied upon by the petitioner was simply that the verdict "was fatally inconsistent as a matter of law?"

STATEMENT OF THE CASE

Vincent Joseph and others were tried on an information charging that they and others conspired to obtain money by false pretenses. Joseph and all of the other defendants except Augustine Prete were passengers in an automobile which was struck by a truck driven by Prete. The conspiracy involved an agreement between all of the conspirators under which the truck was to collide with the automobile, whereupon fraudulent claims of injuries were presented to collect insurance. The jury returned a verdict of guilty as to each of the alleged conspirators except Prete, who was found not guilty. A motion to set aside the verdict was denied by the Court and an appeal was taken. Joseph assigned as error the Court's denial of his motion to set aside the verdict on the ground that it was fatally inconsistent as a matter of law. (Petitioner's Appendix p. 7a) The Supreme Court of Errors of the State of Connecticut found no error.

ARGUMENT

The petitioner disagrees with the Judges of Connecticut in their interpretation of their Rules of Practice.

The rules concerning appeals are made by the judges. Sec. 52-264 General Statutes of Connecticut, Revision of 1958 (App. p. A-1)

Section 612 of the Connecticut Practice Book (App. p. A-1) requires that assignments of error be in substantial conformity with the Forms provided in the Practice Book.

The relevant part of Form 605 C reads as follows:

Errors in the Conduct of a Jury Trial

The Court erred:

1. In denying the plaintiff's (or defendant's) motion

to set the verdict aside (if the attack on the verdict is because the damages are excessive or inadequate, this must be stated), because the damages are excessive (or inadequate); (if it is because the verdict is not supported by the evidence on the issue of liability and because it is excessive or inadequate, this must be stated), because the verdict is not supported by the evidence and because the damages are excessive (or inadequate).

The Connecticut Practice Book is published and distributed by a Commission under the authority of Section 51-16 of the General Statutes of Connecticut, Revision of 1958. (Appendix to Petitioner's Brief, p. 1a.)

The assignment of error relied upon by Petitioner did not follow the suggested Form.

In *Nagel v. Modern Investment Corp.*, 132 Conn. 698, 46 A. 2d 605, the case relied upon by Petitioner, the Supreme Court of Errors entertained an appeal based, in part, upon an assignment of error that the verdict was contrary to law. It was also claimed in that case that the verdict was against the evidence and that it was excessive. (App. p. A-5) It is entirely different to assert the claim, as in the case at Bar, that the verdict is fatally inconsistent as a matter of law.

At that time, Section 370 of the Rules of Practice provided that all of the testimony be printed in the Record, so that it was all before the Court (App. p. A-4)

The Rules make it perfectly clear that the ground relied upon for appeal must be stated in the assignment of errors. The ground stated by petitioner as that upon which he relies is that the verdict was fatally inconsistent as a matter of law. (Appendix to Petitioner's Brief, p. 7a) The Supreme Court of Errors held that the verdict was not so inconsistent. (Appendix to Petitioner's Brief, p. 7a *et seq.*)

Petitioner asserts that the Court should have interpreted his assignment of error to mean that the verdict was not supported by the evidence because he raised that argument in his Brief. Upon such a claim, the evidence must be printed for the Court by one party or the other, as required by Section 718 of the Connecticut Practice Book. (Appendix to Petitioner's Brief, p. 2a) He printed none of the evidence himself. He cannot shift the burden of printing evidence sufficient to support the verdict to the appellee, because he did not claim error in the decision of the trial court on a motion to set aside the verdict on the ground that there was no evidence to support the verdict. His claim was that the verdict was inconsistent as a matter of law.

Section 641 of the Connecticut Practice Book provides that a transcript of evidence be filed with the Clerk of the Court where testimony is required to present the issues. (App. p. A-2) This does not take the place of an appendix, and it is not before the Court as is stated in the Petitioner's Brief. Section 713 (d) of the Connecticut Practice Book provides for the printing of evidence in an appendix. (App. p. A-3)

It is simply not so to state that new law was created or that this case was decided by a Rule nonexistent at the time the appeal was being perfected. Very clearly, it was decided upon a procedural, non-Federal question.

Kammerer v. Kroeger, 299 U.S. 302, 81 L.ed. 253

Hedgebeth v. North Carolina, 334 U.S. 806, 92 L.ed. 1739

Also Annotation in 100 L.ed. 1200

CONCLUSION

It is respectfully submitted that the decision of the Supreme Court of Errors of the State of Connecticut rested upon an independent and adequate state ground which ought not to be reviewed, and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JOHN D. LABELLE
State's Attorney

GEORGE D. STOUGHTON
Assistant State's Attorney

APPENDIX

General Statutes of Connecticut, Revision of 1958, Section 52-264

Sec. 52-264. *Judges of supreme court to make rules for appeals and writs of error.* The judges of the supreme court of errors shall make such orders and rules as they deem necessary concerning the practice and procedure in the taking of appeals and writs of error to the supreme court of errors, and concerning the giving of security by the appealing party, stay of execution during the pendency of appeal, the payment of costs and the taxation of reasonable costs when the same have not been fixed by statute. (1949 Rev., S. 8012; 1957, P.A. 651, S. 32)

Connecticut Practice Book, 1963 Section 612

Sec. 612. *Assignment of Errors; When Filed*

If no finding of facts be necessary to present properly the questions raised upon the appeal, the appellant shall file his assignment of errors with his appeal. If a finding is necessary, he shall file his assignment of errors within ten days from the filing of the finding. Assignments of error shall be filed with the clerk with whom the appeal was filed, and shall be in substantial accordance with Forms 605 and 606.

If, after the appellant files a request for a finding or secures an extension of time to do so, but before a finding is filed, the appellant decides to abandon all phases of the appeal which would require a finding, he shall file with the clerk with whom the appeal was filed a notice to that effect, accompanied by his assignment of errors.

(P.B. 1951, Sec. 388; 1963.)

Connecticut Practice Book, 1963
Section 641

Sec. 641. *Filing Evidence in General*

If any testimony or proceedings note of which were taken by a reporter shall be required for the proper presentation of any of the issues upon an appeal, the appellant shall file with the clerk of the court where the judgment was rendered before or at the time he files his request for finding and draft finding or, if no finding is required, before or at the time he files his assignment of errors, except as otherwise provided in these rules, a transcript of so much thereof as is relevant and material to any of the issues upon the appeal. Upon the filing of the transcript the clerk shall give notice thereof to opposing counsel. If the appellant has filed or caused to be filed a transcript of only a part of the evidence or proceedings, the trial court may *suo motu* direct him to file any additional portions or all of it. An appellee may within ten days of the issuance of notice of the filing file any additional portions of the evidence or proceedings which he deems necessary. The transcript of evidence so filed shall be certified by the official reporter and the trial court. Each paragraph of the findings of subordinate facts or claims of proof in a draft finding and counter finding prepared pursuant to Secs. 613, 614, 615, 629, 630 and 631, and each paragraph of the part of a draft finding or counter finding which contains rulings on evidence pursuant to Sec. 648, shall include a reference to the page or pages of any transcript or transcripts filed pursuant to this rule where the evidence supporting the finding or proposed finding, or where the ruling, appears. Nothing herein contained shall relieve a party of the duty under Sec. 720 to refer in an appendix to a brief to appropriate pages of the transcript. (P.B. 1951, Sec. 404; 1963.)

Connecticut Practice Book, 1963
Section 713 (d)

Sec. 713. *Appellant's Brief*

The appellant's brief should contain the following:

* * * * *

(d) An appendix, which may contain such parts of the evidence on file as the appellant deems material to the questions presented.

* * * * *

(P.B. 1951, Sec. 445; 1963.)

Connecticut Practice Book, 1934
Section 362

Sec. 362. All assignments of error shall be specific and shall directly assert that the trial court committed error in the respects specified, in substantial accordance with Form No. 647, 648 or 650.

The statement should be so made as to avoid unnecessary prolixity or repetition.

It is never proper to repeat a request for a charge, or a statement of facts in respect to a ruling on evidence, or a ground of demurrer, which can be described by reference to a part of the finding in which it appears.

No further specification or recital should be made than such as is necessary to put the court, after an inspection of the whole record, fairly in possession of the particular points of law which the appeal is designed to raise.

Connecticut Practice Book 1934
Section 370

Sec. 370 amended to take effect September 1, 1943.

Upon an appeal from the action of the trial court in setting aside a verdict, partly or solely upon the ground that it is against the evidence, the court shall report all the evidence in such cause, except so much as the parties may stipulate to omit, to the Supreme Court of Errors, and make it a part of the record, without expense to the appellant for its transcription and printing if the appellant shall prevail, but, if and after he shall fail in his appeal, the expense of printing the record shall be paid by him to the clerk for the use of the State. Before printing the evidence, the clerk shall take from the appellant security, by bond or otherwise, for the payment of such expense should the appellant fail in his appeal.

Nagel v. Modern Investment Corporation
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Connecticut Supreme Court Records and Briefs
p. 255

Assignment of Errors

The Court erred:

1. In denying the motion to set the verdict aside as contrary to law.

2. In denying the motion to set the verdict aside as against the evidence.

3. In denying the motion to set the verdict aside as excessive.

The Defendant

The Modern Investment Corporation

By Sachs, Sachs & Sachs
Its Attorneys

(Filed May 21, 1945, Higgins, Clerk.)